

1 EDMUND G. BROWN JR.  
Attorney General of California  
2 FRANK H. PACOE  
Supervising Deputy Attorney General  
3 HANNAH H. ROSE  
Deputy Attorney General  
4 State Bar No. 56276  
455 Golden Gate Avenue, Suite 11000  
5 San Francisco, CA 94102-7004  
Telephone: (415) 703-5515  
6 Facsimile: (415) 703-5480  
*Attorneys for Complainant*

7  
8 **BEFORE THE**  
9 **BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:  
13 **MARGARET ROSE MCDANIEL**  
375 South 17th Street  
14 San Jose, CA 95112  
Registered Nurse License No. RN 480262  
15 Respondent.

Case No. 2010-309

16  
17  
18 **ACCUSATION**

19 Complainant alleges:

20 **PARTIES**

21 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her  
22 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department  
23 of Consumer Affairs.

24 2. On or about August 31, 1992, the Board of Registered Nursing issued Registered  
25 Nurse License Number RN 480262 to Margaret Rose McDaniel (Respondent). The Registered  
26 Nurse License was in full force and effect at all times relevant to the charges brought herein and  
27 will expire on February 28, 2010, unless renewed.

28 //

//

//

JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

6. Section 2811(b) of the Code provides, in pertinent part, that the Board may renew an expired license at any time within eight years after the expiration.

7. Section 2761 of the Code states, in relevant part:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct, which includes, but is not limited to, the following:

"(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing functions.

....

8. California Code of Regulations, title 16, section 1442, states:

"As used in Section 2761 of the code, 'gross negligence' includes an extreme departure from the standard of care which, under similar circumstances, would have ordinarily been exercised by a competent registered nurse. Such an extreme departure means the repeated failure to provide nursing care as required or failure to provide care or to exercise ordinary precaution in a single situation which the nurse knew, or should have known, could have jeopardized the client's health or life."

//

1           9. California Code of Regulations, title 16, section 1443, states:

2           "As used in Section 2761 of the code, 'incompetence' means the lack of possession of or the  
3 failure to exercise that degree of learning, skill, care and experience ordinarily possessed and  
4 exercised by a competent registered nurse as described in Section 1443.5."

5           10. California Code of Regulations, title 16, section 1443.5 states:

6           "A registered nurse shall be considered to be competent when he/she consistently  
7 demonstrates the ability to transfer scientific knowledge from social, biological and physical  
8 sciences in applying the nursing process, as follows:

9           "(1) Formulates a nursing diagnosis through observation of the client's physical condition  
10 and behavior, and through interpretation of information obtained from the client and others,  
11 including the health team.

12           "(2) Formulates a care plan, in collaboration with the client, which ensures that direct and  
13 indirect nursing care services provide for the client's safety, comfort, hygiene, and protection, and  
14 for disease prevention and restorative measures.

15           "(3) Performs skills essential to the kind of nursing action to be taken, explains the health  
16 treatment to the client and family and teaches the client and family how to care for the client's  
17 health needs.

18           "(4) Delegates tasks to subordinates based on the legal scopes of practice of the  
19 subordinates and on the preparation and capability needed in the tasks to be delegated, and  
20 effectively supervises nursing care being given by subordinates.

21           "(5) Evaluates the effectiveness of the care plan through observation of the client's physical  
22 condition and behavior, signs and symptoms of illness, and reactions to treatment and through  
23 communication with the client and health team members, and modifies the plan as needed.

24           "(6) Acts as the client's advocate, as circumstances require, by initiating action to improve  
25 health care or to change decisions or activities which are against the interests or wishes of the  
26 client, and by giving the client the opportunity to make informed decisions about health care  
27 before it is provided."

28

11. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

## FACTUAL BACKGROUND

12. On or about February 11, 2007, while working as a registered nurse at Kaiser Santa Clara Medical Center in the NICU, Respondent undertook to care for and treat an infant patient ("IP") who required continuous gavage feedings at a rate of 19 milliliters (ml) per hour. IP was the only patient assigned to Respondent between 10:00 a.m. and 2:00 p.m. on that day.

Continuous gavage feeding requires the registered nurse to fill a syringe with formula, place the syringe in an infusion pump and program the pump to administer the physician-ordered amount of feeding within the prescribed period of time.

Hospital policy for gavage feeding requires the registered nurse to record in the the infant's chart the feeding intake on an hourly basis. Hospital policy for malfunctioning equipment requires that its use be immediately discontinued and that it be removed from service.

On or about February 11, 2007, at approximately 10:00 a.m., Respondent put the formula in the syringe, labeled the feeding and put the syringe with formula in the feeding pump for IP. At 2:00 p.m., Respondent tested IP's blood sugar and found it to be dangerously low. Respondent immediately notified the physician who ordered a procedure to correct the problem.

Between 10:00 a.m. and 2:00 p.m. on February 11, 2007, Respondent failed to follow hospital policy that required her to check patient IP's fluid intake on an hourly basis.

In an interview with hospital staff on March 21, 2007, Respondent stated that she thought the infusion pump was malfunctioning and that was the reason the feeding was not administered correctly between 10:00 a.m. and 2:00 p.m. on February 11, 2007. Respondent did not remove the equipment or discontinue its use as required by hospital policy.

On February 11, 2007, between 10:00 a.m. and 2:00 p.m., Respondent charted on the Intake and Output Record for patient IP that the patient received 19 ml of feeding every hour between

1 1000 and 1400 hours. Subsequently, Respondent amended her charting by writing "error" over  
2 the intake volumes for those hours.

3  
4 FIRST CAUSE FOR DISCIPLINE

5 (Gross Negligence)

6 13. Respondent is subject to disciplinary action under section 2761(a)(1) in that she was  
7 grossly negligent, as set forth above in paragraph 12, when she failed to view the feeding pump  
8 volume displayed and visually check the amount of formula left in the syringe to ensure that it  
9 was infusing properly as required by hospital policy.

10  
11 SECOND CAUSE FOR DISCIPLINE

12 (Incompetence)

13 14. Respondent is subject to disciplinary action under section 2761(a)(1) in that she was  
14 incompetent, as set forth above in paragraph 12, in that she failed to demonstrate or exercise  
15 competency with medical equipment when she failed to ensure that the feeding pump for patient  
16 IP was working properly and to immediately discontinue its use and remove it from service if it  
17 was not working properly, as required by hospital policy.

18  
19 THIRD CAUSE FOR DISCIPLINE

20 (Incompetence)

21 15. Respondent is subject to disciplinary action under section 2761(a)(1) in that she was  
22 incompetent, as set forth above in paragraph 12, in that she failed to ensure accurate and timely  
23 documentation was completed and falsified patient IP's intake record by charting that the patient  
24 received 19 ml per hour when the patient was actually receiving much less than that amount.

25  
26 PRAYER

27 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
28 and that following the hearing, the Board of Registered Nursing issue a decision:

1           1.    Revoking or suspending Registered Nurse License Number RN 480262, issued to  
2 Margaret Rose McDaniel.

3           2.    Ordering Margaret Rose McDaniel to pay the Board of Registered Nursing the  
4 reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
5 Professions Code section 125.3;

6           3.    Taking such other and further action as deemed necessary and proper.  
7  
8

9  
10 DATED: \_\_\_\_\_

12/28/09



LOUISE R. BAILEY, M.ED., RN  
Interim Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant

14 SF2009404577  
15 accusation.rtf  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28